Office - Supreme Court, U.S.
FILED
DEC 5 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-649

IN THE

Supreme Court of the United States

October, 1983 Term

ANTHONY TAMILIO,

Petitioner,

—v.—

WALTER FOGG, Superintendent, Eastern Correctional Facility, and ROBERT ABRAMS, Attorney General of the State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

ELIZABETH HOLTZMAN
District Attorney
Kings County
Municipal Building
210 Joralemon Street
Brooklyn, New York 11201

* BARBARA D. UNDERWOOD
MICHAEL GORE
Assistant District Attorneys
Of Counsel

* Counsel of Record

Question Presented

Whether the joint trial of petitioner and his two co-defendants for felony-murder was constitutionally permissible under the Confrontation Clause of the Sixth Amendment, where petitioner's own confession to participation in both the robbery and the killings, taken with the substantial evidence of his active complicity, was adequate to support a conviction, and his confession "interlocked" with those of his co-defendants on his participation in both crimes?

TABLE OF CONTENTS

PAGE

Question Presented i

Opinions Below 1

Jurisdiction 2

Statement of Facts 2

Procedural History 2

The State Murder Trial 3

The Pre-Trial Severance Motion 3

The People's Case 4

The Confession 4

The Other Evidence 5

The Co-defendants' Confessions 7

Petitioner's Defense 9

Reasons Why The Writ Should Be Denied 11

A. *Parker v. Randolph* Compels The Conclusion That Petitioner's Confession Interlocks With The Statements Of His Co-Defendants In All Significant Respects And Therefore The Joint Trial Was Constitutionally Proper .. 12

B. If There Was Any *Bruton* Error, It Was Harmless Beyond A Reasonable Doubt 13

CONCLUSION 16

TABLE OF AUTHORITIES

Cases:

Brown v. United States, 411 U.S. 223 (1973) 15

PAGE

Bruton v. United States, 391 U.S. 123 (1968) 2, 3, 11, 12

Harrington v. California, 395 U.S. 250 (1969) 15

Parker v. Randolph, 442 U.S. 62 (1979) 3, 4n, 11, 12, 13

People v. Cappiello, 85 A.D.2d 600 (1981) 2n

People v. McNeil, 24 N.Y.2d 550 (1969) 4

People v. Santanella, 63 A.D.2d 784 (2d Dep't 1978) 2

People v. Santanella, 82 A.D.2d 869 (2d Dept. 1981) 2n

People v. Tamilio, lv. den., 45 N.Y.2d 784 (1978), *cert. den.*, 443 U.S. 912 (1979) 2

Schneble v. Florida, 405 U.S. 427 (1972) 15

Tamilio v. Fogg, 546 F.Supp. 364 (E.D.N.Y. 1982) 3

United States ex rel. Catanzaro v. Mancusi, 404 F.2d 296 (2d Cir. 1968) 11

Statutes:

New York Penal Law § 125.25(3) 2

28 U.S.C. § 1254(1) 2

28 U.S.C. § 2254 3

United States Constitution Amendment VI ..... i, 3, 11

No. 83-649

IN THE

Supreme Court of the United States

October, 1983 Term

ANTHONY TAMILIO,

Petitioner,

—v.—

WALTER FOGG, Superintendent, Eastern Correctional Facility, and ROBERT ABRAMS, Attorney General of the State of New York,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION

The respondents, Walter Fogg, Superintendent, Eastern Correctional Facility, and Robert Abrams, Attorney General of the State of New York, respectfully request that this Court deny the petition for a writ of certiorari, seeking review of the Second Circuit's opinion in this case. That opinion is reported at 713 F.2d 18.

Opinions Below

The opinion of the United States Court of Appeals for the Second Circuit is reproduced in Petitioner's Appendix at 1a-7a. The opinion of the United States District Court for the Eastern District of New York is reported at 546 F. Supp. 364, and is reproduced in Petitioner's Appendix at 8a-34a.

Jurisdiction

The judgment of the United States Court of Appeals for the Second Circuit was entered on July 27, 1983. The petition for certiorari was filed within 90 days of that date. This Court has jurisdiction of the petition under 28 U.S.C. § 1254(1).

Statement of Facts

Procedural History

Anthony Tamilio, along with two co-defendants, John Cappiello and Ralph Santanella, was convicted in New York Supreme Court of two counts of felony-murder, New York Penal Law § 125.25(3), in connection with the deaths of two elderly Brooklynites, Joseph and Angelina Tucci, during a robbery of their home. After the joint trial, Tamilio was sentenced to a term of imprisonment of from twenty-five years to life, the maximum sentence authorized by law.

His conviction was unanimously affirmed,[1] *sub nom.*, *People v. Santanella*, 63 A.D.2d 744, 405 N.Y.S.2d 284 (2d Dept. 1978), *leave to appeal denied*, 45 N.Y.2d 784 (1978), *cert. denied*, 443 U.S. 912 (1979). The single point raised on the petition for certiorari was whether petitioner's constitutional rights were violated under *Bruton v. Unted States*, 391 U.S. 123 (1968).

---

[1] At the same time, the Appellate Division unanimously reversed the convictions of co-defendants Cappiello and Santanella on the grounds of prejudicial error in the court's charge on the affirmative defense to felony-murder N.Y.P.L. § 125.25(3). On retrial, the defendants were again convicted of murder. Each conviction has since been affirmed on appeal, *People* v. *Cappiello*, 85 A.D.2d 600 (1981), *lv. den.*, 56 N.Y.2d 595 (1982) and *People* v. *Santanella*, 82 A.D.2d 869 (1981), *lv. den.*, 54 N.Y.2d 758 (1981).

Thereafter, Tamilio filed this application for federal *habeas corpus* relief pursuant to 28 U.S.C. § 2254, alleging that his federal constitutional rights under *Bruton* had been violated by the admission into evidence of certain statements of the co-defendants in the joint trial. The District Court granted the petition, finding constitutional error under *Bruton*, and finding that the error was not harmless in this case. *Tamilio v. Fogg*, 546 F. Supp. 364 (E.D.N.Y. 1982) (Petitioner's Appendix at 8a-34a).

The Court of Appeals for the Second Circuit unanimously reversed the District Court and denied *habeas corpus* relief. (Petitioner's Appendix at 1a-7a). The Second Circuit, per Judge Van Graafeiland, found that Tamilio's own confession to participation in the robbery sufficed to support his conviction for felony-murder and interlocked with the statements of the other defendants, and that the joint trial was therefore proper under *Parker* v. *Randolph*, 442 U.S. 62 (1979). (Petitioner's Appendix at 6a). Moreover, if any error occurred it was harmless. (Petitioner's Appendix at 6a-7a).

Petitioner is currently incarcerated pursuant to his sentence.

The State Murder Trial

The Pre-Trial Severance Motion

Prior to the commencement of trial, petitioner moved to sever his trial from that of his two co-defendants, on the ground that a joint trial would result in the violation of his Sixth Amendment right of confrontation under *Bruton v. United States*, 391 U.S. 123 (1968), through the introduction into evidence of statements made by his co-defendants (581).[2] To facilitate the determination of

[2] Numbers in parentheses refer to pages of hearing and trial transcript.

that motion, the prosecutor furnished the Court the Grand Jury testimony which outlined confessions of petitioner and Santanella to friends and an inmate (Washington), as well as the stenographically-transcribed statements of Cappiello, given to an Assistant District Attorney on the evening of his arrest (583-84; 589-92). The prosecution urged a joint trial on the ground that the several statements were interlocking, and hence would give rise to no *Bruton* violation under the rule of *People v. McNeil*, 24 N.Y.2d 550 (1969).[3] The Court denied severance, based upon the existence of confessions by all the three defendants, but indicated its decision could be changed if the trial testimony required it (594).

The People's Case

The Confession

John Washington testified that on August 18, 1976, he was in a holding pen at the Criminal Court Building where he had a conversation with petitioner (1323). They were alone for a few minutes.[4] Petitioner said he and two "buddies" were in for homicide (1324). He stated they did not catch him at the scene, so he was not scared (1324). He said that the robbery had netted a "ring and few grand" (1324).

Under prodding from Washington, petitioner told Washington this happened in the Bensonhurst section of Brooklyn and showed him a newspaper clipping of the story (1325), which petitioner read from. Petitioner stated he knew the old people who lived in the house and he also knew how to get inside (1325). The three boys

---

[3] *See Parker* v. *Randolph*, 442 U.S. 62 (1979).

[4] Captain Harold Naber of the Department of Correction produced records of August 18, 1976 indicating that petitioner and Washington could have been together on that date although it was unlikely that they could have been alone (1843, 1850).

ransacked the place and the lady began to scream, so while Cappiello held her, petitioner hit her with a "gun butt" (1326, 1327).

Petitioner also said he would get five grand to "put it on" Santanella so that he and Cappiello would go free (1330). Washington did not then reveal the contents of this conversation to the authorities.

The jury was instructed that this statement could only be used against petitioner (1326).

The Other Evidence

At about 9:30 a.m. on August 10, 1976, petitioner arrived at the home of Ralph Santanella and his mother Mary Santanella (1235). Mrs. Santanella owned a station wagon bearing license plate "729-KUE" (1227). The two boys, along with John Cappiello, drove in this car to the quiet Bensonhurst neighborhood of 63rd Street and parked near the home of an elderly couple, named Joseph and Angelina Tucci, who lived at 1048 63rd Street[5] (755-57, 1388-89). Petitioner's father owned a nursery, and that nursery had done business with the Tuccis according to Mr. Tucci's sister, Mrs. Fanny Folise (1387-88).

At about 11:00 a.m., Mrs. Lorraine Frasca, who lived about six houses down the street from the Tuccis, chanced to see the green station wagon parked on the wrong side of the street. A boy sat in the back seat of the car. She noticed the car's license plate, "729-KUE", because her son's birthday was July 29 (754, 812, 865). Shortly thereafter, she saw the petitioner and Santanella walk

---

[5] These matters were admitted in petitioner's trial testimony (1940 *et seq.*).

from the alleyway leading to Tucci's house, and enter the station wagon. Santanella drove the car away. Although Mrs. Frasca did not know that a murder had taken place, she identified petitioner subsequently in a lineup, and was absolutely certain of his identity (Frasca: 756-57, 772-73, 798).

Later that morning, Mrs. Santanella let petitioner and Cappiello off at the Kings Plaza Shopping Center (1229). After driving her son Ralph to a dentist appointment, she later left him off near there, too (1228, 1230). Three tellers employed at the Dime Savings Bank, Kings Plaza, testified that on that day, petitioner went to that bank and presented a bankbook in the name of Joseph and Angelina Tucci and a handwritten note requesting $2500 (878-79, 912-4, 927, 937-38). No money was paid because the signature in the book did not match the signature on a note written by petitioner. The three tellers identified petitioner eight days later in lineups (882-85; 923-24; 943-44).

Two bankbooks with the name "Tucci" on it were found nearby, and given to the police. A police fingerprint expert found petitioner's fingerprint on one of the books (959-61, 967-73, 977-84).

About two days later, Mrs. Folise, who lived in the upstairs apartment of her brother Joseph Tucci's two family house, returned from vacation and found the body of his sister-in-law lying near the kitchen. Her brother Joseph had several rings, including a diamond pinky ring. She did not see them after the murders (734-40).

Police Officer Alexander Giuffre responded to the Tucci's house that evening and found a pool of blood, a roll of silver tape, a hammer, and the body of Mrs. Tucci

with apparent hammer holes in her head[*] (689). The house appeared to have been ransacked (689). He then found the body of Mr. Tucci face down in the basement. The feet were bound with clothesline, and the hands and mouth tied with the same tape as was found upstairs (690).

The Co-Defendants' Confessions

In addition to the petitioner's confession to Washington, and the evidence relating to the identification by Mrs. Frasca, the testimony of the bank tellers, the fingerprint evidence, and the rest of the evidence of a circumstantial nature, the statements of co-defendants Cappiello and Santanella were admitted at the joint trial. These included Cappiello's two stenographically-transcribed statements, oral statements to Detective Kilcullen, and three statements to his friends. Oral statements of Santanella to a friend and to Washington were also received. The Court delivered proper instructions in regard to each statement, instructing the jury that each of these statements could be used only against the defendant who made the statement.

Assistant District Attorney Mark Schultz took a stenographically-transcribed statement from John Cappiello. He admitted going with petitioner in Ralph Santanella's car to rob the residents of a house in Bensonhurst (1702, 1708). Cappiello waited outside as the others went in (1707-08). Cappiello admitted going through "a few drawers" in the house, looking for loot (1712). Although

---

[*] Dr. Milton Wald, Medical Examiner, examined the bodies of the Tuccis on August 12 at about 9:00 p.m. (713). The body of Mrs. Tucci had numerous round wounds, and a hammer was found near her head. She died of multiple, blunt force injuries of the head, skull fracture, and contusions and lacerations of the brain (714, 718). Joseph Tucci was in the basement. Mr. Tucci died of multiple, compound, comminuted fractures of the brain (714, 717). Dr. Wald's approximation of the time of death was 24 to 48 hours previous to his viewing of the victims. Mr. Tucci was 78, Mrs. Tucci, 82 years of age (721).

the victims had been tied up, he did not see any blood on the Tuccis when he left (1713). As they drove off, petitioner had told him that they had knocked the victims out (1714).

Later that night, Cappiello gave a second statement to Schultz. Cappiello admitted that he had searched the house for money (1745), and that he had seen petitioner striking Mrs. Tucci (1741, 1746). He mentioned that they stole a ring (1737-38), which he later showed to his friend Russell Cunningham (1738), and which he was swindled out of the next day (1740-41). Cappiello also stated that they had taken bankbooks, and he had gone with petitioner to the Dime Savings Bank at Kings Plaza, and tried unsuccessfully to get money from the Tucci account (1738-40).

Three frends of John Cappiello testified to conversations with him about the murders. Cappiello told two of them that petitioner owed him money, and that Tamilio intended to repay it by stealing from a house. Cappiello had gone to the house with petitioner and Ralph Santanella (1005-06, 1255-56). After being let inside, petitioner asked Mr. Tucci for money (1258). The robbers tied up the elderly couple and searched the house for money. Petitioner struck the lady with a "tool or hammer" (1287; 1008; 1011; 1013-14). Cappiello also told them that they had taken a bankbook and a ring. One friend remembered seeing the ring that night, but the other denied it (1012, 1270).

Cappiello told the third friend that they killed the man, and petitioner had ordered Ralph to finish off the lady, but Ralph did not do so (1166). This witness did not recall anything about the ring (1182).

A friend of co-defendant Santanella testified that Ralph had stated he went with petitioner and Cappiello,

in his mother's car, to participate in a robbery in which two people were killed (1109-11). Petitioner had planned the robbery and knew the victims (1118). Once at the house, they tied up the two people, threw the man down a flight of stairs, and petitioner killed the old lady with a hammer (1110-15). Petitioner ordered Santanella to kill the old man, but he did not do so (1123). The three men searched the house, and took a ring (1115).

John Washington [7] testified that Ralph Santanella was a fellow inmate at Riker's Island, and that Santanella told him about the murders. Washington did not know exactly when the conversations took place (1338).

Santanella stated he picked up petitioner and Cappiello, and petitioner told him where to drive (1334). Santanella waited outside while the others went in (1334-35). He was not part of the robbery plan (1338). When he went in the front door, he heard screams, and saw petitioner hitting the old lady with the gun-butt (1335), while Cappiello was holding her. Two people were killed in the robbery (1337). Santanella fled the premises (1335). Santanella stated he did not get any money, but Cappiello got a ring (1337).

Petitioner's Defense

Tony Tamilio, petitioner's father, testified that he had bought cement pots from Joseph Tucci for his nursery (1911). Petitioner offered to pick up some cement pots

---

[7] Washington had been convicted of burglary and possession of stolen property (1343, 1344). He had had other arrests (1590 *et seq.*), and had used cocaine and heroin (1614). Washington stated he had not been promised anything with regard to his pending case (1350). Counsel for petitioner attempted to demonstrate that Washington was a friend of Santanella's, and that his testimony was unreliable (1581 *et seq.*).

on Tuesday morning, August 10, 1976, in a friend's station wagon (1918). He next saw petitioner at about 2:30 to 3:00 p.m. that afternoon. Petitioner told him he had not gotten the pots because they were not ready (1920).

Petitioner Anthony Tamilio testified in his own defense. He said that he had gone with Cappiello to pick up the cement pots from Joseph Tucci in Santanella's green station wagon on August 10 (1948). When they arrived, he went inside with Santanella, while Cappiello stayed outside, in the car (1953). The pots were too heavy for the car and they could not take them (1955). He spoke to Mr. Tucci as he left the house (1956). Santanella drove him home.

That afternoon, he went to Kings Plaza (1959), where he chanced to meet Cappiello (1960). He denied having been driven there by Santanella's mother (2075). Cappiello told him Santanella was waiting outside, and Cappiello asked petitioner to help him take money out of the bank (1961).

Petitioner said he presented a note to the teller stating he was related to the person named on the bankbook, but he did not know the name on the book (1962). When the signature did not match, the teller refused to give him the money (1963).

He did not recall ever seeing or speaking with John Washington (1967). He denied any involvement in the crime (1968).

On cross-examination, petitioner stated he never knew the name Tucci until after the murders (2000). He only knew Mr. Tucci as "Joe," although he had known him for six years (1950). He stated he did not owe John Cappiello any money (2008).

Petitioner also called a number of neighbors of the Tuccis in an attempt to establish that the Tuccis were alive after the morning of August 10. However, none of the witnesses could recall with certainty having seen them.

The jury convicted all three defendants of two counts of felony-murder (2354 *et seq*).

Reasons Why The Writ Should Be Denied

The decision below raises no question of constitutional law worthy of this Court's review. Instead it correctly applies settled principles of law to a lengthy factual record. Petitioner was convicted of felony-murder on the basis of his own confession and extensive corroborating evidence. He was jointly tried with two co-defendants, whose confessions were introduced against them, subject to limiting instructions precluding their use against petitioner. On this petition for federal *habeas corpus* relief, he claimed the joint trial violated his Sixth Amendment right to confrontation under *Bruton v. United States*, 391 U.S. 123 (1968). The Second Circuit Court of Appeals vacated a grant of the relief, holding that petitioner's own statement sufficiently interlocked with those of his co-defendants to satisfy the "interlocking confession" rule of *Parker v. Randolph*, 442 U.S. 62 (1979) and *U.S. ex rel. Catanzaro v. Mancusi*, 404 F.2d 296 (2d Cir. 1968). *See* Petitioner's Appendix, pp. 5a-6a. The Second Circuit also found that if any error was committed in the joint trial, it was harmless beyond a reasonable doubt. *See* Petitioner's Appendix, pp. 6a-7a. Both the determination of interlocking confessions, and the determination of harmless error, are straightforward applications of settled principles of law to the facts of the case. No constitutional question is presented that could possibly merit this Court's review.

A. *Parker* v. *Randolph* Compels The Conclusion That Petitioner's Confession Interlocks With The Statements Of His Co-Defendants In All Significant Respects And Therefore The Joint Trial Was Constitutionally Proper.

In *Bruton v. United States*, 391 U.S. 123, 125 (1968), this Court set aside a conviction on the ground that the defendant's Sixth Amendment right to confront witnesses was violated by the introduction into evidence of his co-defendant's confession implicating both defendants, despite limiting instructions that directed the jury to consider the confession only against the person who made it. In *Parker v. Randolph*, 442 U.S. 62 (1979), this Court held that a defendant's right of confrontation under *Bruton* was not violated by the admission of a co-defendant's confession, where the complaining defendant had also confessed. The Court held that a defendant whose own confession is in evidence before the jury does not face the "devastating risk" that the jurors will ignore a trial court's proper limiting instructions, and therefore, the "admission of interlocking confessions with proper limiting instructions conforms to the requirements [of the Constitution]." 442 U.S. at 74-75 (plurality opinion).

The Second Circuit held that in this case, the confession by petitioner to Washington "interlocked" with those of his co-defendants to a sufficient degree to permit the joint trial below, under *Parker* v. *Randolph*. This was the identical conclusion reached by the New York State Appellate Division on direct appeal some five years earlier. *See* Petitioner's Appendix, pp. 43a-44a. As petitioner apparently concedes, that determination is clearly correct.[8]

---

[8] Petitioner claims that this Court has never recognized the exception for interlocking confessions, Petition, p. 12 fn, but this is clearly incorrect. *Parker* v. *Randolph*, 442 U.S. at 74-75.

The record reveals that petitioner confessed to participation in a robbery resulting in homicide, and that this, taken with evidence of the crime, sufficed to convict him of felony-murder. His confession included admissions that he struck one of the victims with a blunt instrument. Medical testimony confirmed that the victims died of wounds inflicted in such a manner. Other details related in his confession were confirmed by physical evidence at the trial and testimony of various witnesses. The co-defendant's confessions, which also incriminated petitioner, corresponded in substantial detail with petitioner's own devastating confession. It is clear from the record at trial that petitioner's guilt of felony-murder was established by his confession plus the other admissible evidence at trial, and the Second Circuit's conclusion was inevitable. Under *Parker* v. *Randolph*, petitioner's joint trial based on the existence of "interlocking confessions" with his co-defendants conforms to Constitutional requirements. 442 U.S. at 74-75.

B. If There Was Any *Bruton* Error, It Was Harmless Beyond A Reasonable Doubt.

Petitioner's chief contention is that this Court should reject the interlocking confession exception, and replace it with pure harmless error analysis. But this would be an inappropriate case to reconsider the *Parker* rule, because even absent the *Parker* exception, as the Second Circuit observed, any error was harmless and would bar relief.

The admissible evidence against petitioner, wholly apart from his co-defendant's statements, was so overwhelming as to render any *Bruton* error harmless beyond a reasonable doubt. Petitioner admitted his presence at the scene of the murders both in his trial testimony, and in his statement to the detective, and was identified by Frasca. He was also identified as having attempted to withdraw money from the bank account of the victims that afternoon. His fingerprint was found on one such bank-

book. Moreover, it was clearly established that petitioner's father did business with the victims, and petitioner was well-known to them. Petitioner's confession to Washington fully admitted participation in the robbery and in the beatings that led to the victims' deaths. Petitioner's statement, taken with highly damaging circumstantial evidence, provided an overwhelming case against him.

Nor was petitioner's trial testimony likely to provide an innocent alternative to petitioner's guilt. Petitioner testified that he was present at the Tucci house on the morning of August 10, and Ralph Santanella drove him home, but he claimed that no crime had occurred. Petitioner then testified that he later went alone[9] to Kings Plaza, where he happened to meet Cappiello by chance at the bank, and tried unsuccessfully to help his friend take money out the bank by presenting the victims' bankbook. At no time did petitioner notice the name "Tucci" on the bankbook. He was wholly unfamiliar with the name even though he had been at the Tucci home nearly 50 times. As the Second Circuit's opinion observed, petitioner's story was incredible. *See* Petitioner's Appendix, p. 3a. Petitioner's account was not capable of acceptance by the jurors.

Petitioner's own statement was unequivocal as to his participation in the planning of the robbery as well as the murder itself. Indeed, the confession included the petitioner's admission that he hit Mrs. Tucci repeatedly to silence her screams (1326-27). Petitioner's chief argument is that a joint trial where "interlocking confessions" exist is improper where the defendant denies making the

---

[9] That testimony was squarely contradicted by Mrs. Santanella, who testified that she had dropped off petitioner and Cappiello at Kings Plaza that morning and later left her son Ralph off nearby. Mrs. Santanella's testimony was especially credible because she failed to provide an alibi even for her own son.

statement admitted against him. *See* Petitioner's Brief, at 16-17. As the Second Circuit noted, petitioner never expressly denied having confessed to Washington. Petitioner argues that his trial testimony implies such a denial. But in light of the other evidence, petitioner's trial testimony was so patently incredible that the jury could not possibly credit that testimony, much less any implication from it. The Second Circuit correctly found that upon all the evidence presented against petitioner, the jury "would not have found the state's case significantly less persuasive" if the co-defendant's admissions were not placed before them. Thus, no "devastating effect" could have resulted had the jury ignored the trial court's clear, limiting instructions. *See* Petitioner's Appendix, at 7a.

The admissible evidence against petitioner, apart from the co-defendant's statements, was so overwhelming that those statements could not have contributed to petitioner's conviction. Error, if any, was harmless beyond a reasonable doubt. *Brown* v. *United States*, 411 U.S. 223, 231 (1973). *Schneble* v. *Florida*, 405 U.S. 427, 432 (1972). *Harrington* v. *California*, 395 U.S. 250, 254 (1969).

CONCLUSION

For these reasons, the petition of a writ of certiorari should be denied.

Dated: Brooklyn, New York
December 1, 1983

Respectfully submitted,

ELIZABETH HOLTZMAN
District Attorney
Kings County
Municipal Building
210 Joralemon Street
Brooklyn, New York 11201

* BARBARA D. UNDERWOOD
MICHAEL GORE
Assistant District Attorneys
Of Counsel

* Counsel of Record